

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

**REVIEW OF THE 2011-2012 ANNUAL REPORT
OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

At Sydney on Friday 21 June 2013

The Committee met at 11.00 a.m.

PRESENT

Mr M. R. Speakman (Chair)

Legislative Council

The Hon. N. Blair
Reverend the Hon. F. J. Nile
The Hon. L. Voltz

Legislative Assembly

The Hon. R. S. Amery
Mr M. J. Coure
Mr A. R. Gee (Deputy Chair)
The Hon. T. George
Ms T. Mihailuk
The Hon. N. Rees

DAVID ANDREW IPP, Commissioner, Independent Commission Against Corruption,

SHARON LEIGH LODER, Executive Director, Investigation Division, Independent Commission Against Corruption, and

ROBERT WILLIAM WALDERSEE, Executive Director, Corruption Prevention Division, Independent Commission Against Corruption, affirmed and examined, and

THERESA JUNE HAMILTON, Deputy Commissioner, Independent Commission Against Corruption,

ROY WALDON, Solicitor to the Commission and Executive Director, Legal Division, Independent Commission Against Corruption, and

ANDREW KOUREAS, Executive Director, Corporate Services Division, Independent Commission Against Corruption, sworn and examined:

CHAIR: I welcome the Commissioner of the Independent Commission Against Corruption and other senior executive staff for the purpose of giving evidence on matters relating to the Commission's annual report for 2011-12. I convey the thanks of the Committee for your appearance today. The Committee resolved this morning to ask witnesses to respond to any questions on notice within two weeks. If in the course of giving your evidence a question is taken on notice and you do not think you can respond within two weeks can you please indicate that to the Committee? Commissioner, would you like to make an opening statement before the commencement of questions?

Mr IPP: Thank you, Mr Chair, for this opportunity. I propose to give this Committee now a brief summary of the Commission's activities over the past year. For most divisions of the Commission this year has been dominated by Operations Indus, Jasper and Acacia. A significant amount of our resources has been tied up with the public inquiries in these operations. Preparations for these inquiries commenced more than a year ago. In the initial investigation phase of these operations the Commission received secondments of nine additional officers from other agencies. In the course of the investigation the Commission issued over 380 notices or summonses to produce documents, executed nine search warrants, used covert powers, conducted 159 compulsory examinations over 68 days, and took 124 witness statements.

As the investigation moved to the public inquiries phase, the Commission engaged two Senior Counsel and two junior counsel to assist in the three inquiries as well as a third Senior Counsel to provide advice on specialised particular issues as they arose. The public inquiry period for these operations ran over 85 hearing days, from 1 November 2012 to mid-May. The public inquiry phase involved taking evidence from over 160 witnesses, most of whom were represented by counsel and solicitors. Significantly more than 200 lawyers were involved. The three operations generated over 8,500 pages of transcript; about 200 exhibits were tendered and these amounted in total to many thousands of pages, and thousands of documents were provided to people potentially affected.

The Commission intends to produce reports by the end of July for at least Operation Jarilo, which is the investigation concerning Mr Macdonald, Mr Medich and Mr Lucky Gattellari, and Operations Indus and Jasper. Operation Jasper ran over its estimated time period by some three weeks, into May, and this has meant that it will be difficult for the Commission to produce its report on Operation Acacia by the end of July. Should that occur, we intend to produce that report by the end of August. A corruption prevention report relating to these operations will also be produced in August. Officers of the Commission, including myself, are presently working intensely on the production of all these reports.

For the financial year ending June 2013, the Commission received a grant of \$3.2 million to finance the mining tenement inquiries and the construction of a new and larger hearing room. The Commission has been advised informally that for the financial year ending June 2014, it will receive a further grant of \$3.5 million to allow it to continue with current investigations into mining licences and other matters, and to ensure that significant pending investigations can still be undertaken. I will refer later to additional grants the Commission has received for the acquisition of IT equipment and for the possible relocation of the Commission's premises next year. I wish to express my gratitude for this crucial support. The stark fact is that Operations Jasper and Acacia could not have been undertaken without it. There is, of course, a significant risk of major restructuring

and downsizing should future grants cease or be reduced. Be that as it may, there was a compelling need for the mining inquiries to be held.

Notwithstanding the considerable attention that Operations Indus, Jasper and Acacia demanded, the Commission has been able to maintain its overall output, and to a substantial extent its compliance with its internal standards on all of its other statutory activities, including the investigation of other potential instances of corrupt conduct. For the period 1 July 2012 to 31 May 2013, the Commission conducted 108 days of public inquiries for 6 operations. This compares to 60 days of public inquiries over the same period in the previous financial year. For the period 1 July 2012 to 31 May 2013, the Commission conducted 244 compulsory examinations as opposed to 124 conducted in the previous financial year. Six investigation reports were published between 1 July 2012 and 31 May 2013, and findings of corrupt conduct were made against 55 people.

There has been a substantial increase in the number of litigation matters being managed by the Commission. There were seven litigation matters current during the period 1 July 2012 to 31 May 2013. One of these is still current and two are subject to appeal with the Commission as respondent. We are awaiting judgment in these and in fact we were informed last evening that judgment in D'Amore's appeal is being given this morning at 11.15 a.m. I do not know the result of that. In two of the remaining four matters the Commission was successful and the other two were settled satisfactorily.

The overall number of matters reported to the Commission and received by the assessment section is relatively static. There is no marked increase or decrease. For the year so far it has received 2,825 complaints compared with 2,978 for the previous financial year. So far for this financial year the assessment section conducted inquiries in 194 matters as opposed to 226 in the last financial year. The section referred 103 matters to particular agencies for reports by them in one form or another. This compares with 134 in the previous financial year. The assessment section has met all targets in the Commission's business plan and the figures I have given demonstrate that it is holding its own and maintaining its standards.

To date this year more than 65 preliminary investigations have been commenced and 22 matters escalated to full investigation. In the previous financial year the Commission undertook 73 new preliminary investigations and 19 matters were escalated to full investigations. In fact, over the past five years, the number of preliminary investigations undertaken by the Commission, on average almost 70 per year, has remained relatively stable. The seriousness of those matters, however, has increased. This feature notwithstanding, there has been an increase in the preliminary investigations completed within our timeliness standards from a five-year low of around 40 per cent to now more than 80 per cent. This in turn has resulted in a steady upward trend in the number of full investigations undertaken by the Commission. Added to this is the increased complexity of the investigations. These factors together are responsible for the significant pressure on the Commission's investigation resources. Timeliness for completion of full investigations has been affected by this.

In the 2013 financial year the Commission is tracking towards an average of more than 15 full investigations on hand at any point in time, representing a 50 per cent increase on the previous four-year average. This, in the light of all the circumstances, I would respectfully suggest, is a remarkable achievement. The Commission has focused on a number of initiatives to enhance its efficiency and quality of work. These initiatives have been outlined in our answers to questions 8, 9, 11 and 29 of the questions on notice. These achievements, we think, are significant.

The Commission's substantive review of its investigation procedures and rewrite of its operations manual is a large and important undertaking that will continue throughout 2014. Over the past number of years the corruption prevention division of the Commission has conducted extensive research on the corruption risks associated with procurement. In December 2011 the Commission released its fourth report on this subject. The corruption prevention division continues to deliver speaking engagements on this topic to public sector managers along with providing training in corruption prevention in procurement.

In February 2012, the Commission released its report entitled "Anticorruption safeguards and the NSW planning system". This report outlined the key anticorruption safeguards that should underpin our planning system. The report focused on the need to reduce complexity and provide certainty while at the same time ensuring transparency and allowing for meaningful community participation.

Since that time the Commission has prepared a submission to the Government's green paper on reforms to the New South Wales planning system. In August 2012 the Commission published a consultation paper examining the funding of non-government organisations in New South Wales. The consultation paper examined

the corruption risks in these funding arrangements, and submissions were received from interested parties. Following analysis of the submissions, a position paper entitled, "Funding NGO delivery of human services in New South Wales: a period of transition", was released in December last year. This paper analysed the organisational control requirements for managing the decentralised funding of non-government organisations. It made 18 recommendations to Government.

In the 2012-13 financial year the corruption prevention division delivered 116 training workshops, an increase of 30 per cent on the previous year, and 79 speaking engagements, an increase of 50 per cent on the previous year. Through these programs the Commission has directly reached over 5000 people, increasing their awareness and skills in preventing corruption.

The corporate services division has had an extremely busy year supporting the substantially increased activities of the Commission. Two major matters with which the corporate services division has been concerned this year and which are worthy of mention, are, firstly, construction of a new computer room including all necessary services and, secondly, development of a forensic system known as iBase, which includes data cleansing and importing of telephone call charges data into the iBase database. iBase is an intelligent database that enables users to conduct analysis to help identify patterns and trends. This saves the Commission a great deal of time, for example, in being able to quickly analyse thousands of call charge records from telcos.

The digital age continues to challenge the Commission's investigation capabilities. A major part of the procedures review now being undertaken by our investigation division will be focused on enhancing those systems and processes by which the Commission captures, manages, uses and analyses the increasingly vast quantities of evidentiary material—digital, virtual and real—with which it is required to deal. For the next financial year the Commission has received a grant of \$5.1 million to upgrade its IT equipment, and this will be of major assistance.

Corporate services has been very active in preparing the business case for office accommodation fit-out funding at either the existing or a new location. This has been necessary as our lease expires on 15 October 2014. The Commission has received an additional \$5.2 million for the fit-out. Preparation has to be undertaken at this stage in order to be ready if necessary to move to new premises at that date. Considerable work has been done on this project, including on the design and tender documentation. The Commission is presently awaiting approval from the Minister for Finance and Services to allow the relevant government agency to enter into commercial negotiations on our behalf with the desired landlord. The Commission anticipates that approval to proceed to negotiations for its preferred site by the end of this month. It plans to appoint by late August an external project manager to manage the fit-out and any relocation that may be required. The project manager is expected to invite and evaluate tenders, with the Commission appointing a contractor by mid-December this year.

Before concluding, I wish to return to operations Indus, Jasper and Acacia. These operations constitute one of the most important sets of investigations in the Commission's history. I wish publicly to commend those who are involved in those operations. They have been undertaken with professionalism and commitment. It would be remiss of me if I did not also commend the rest of the Commission who had to bear the extra load of maintaining the normal work of the Commission while these operations were proceeding. In the same vein, I wish sincerely to thank all political parties and, in particular, those in opposition for their unwavering and practical support in what, for some, would have been difficult circumstances. I conclude by saying that the Commission has had a pretty challenging time this year, but it is in good shape. I am happy to say that morale is high and its officers are working with energy and commitment.

CHAIR: Do you have any comments about the adequacy of the 2013-14 budget allocation to the Commission?

Mr IPP: Yes, we got what we received, thank you. We are very happy with it. No complaints.

CHAIR: Have you looked at the new Independent Broad-based Anti-corruption Commission [IBAC] legislation in Victoria?

Mr IPP: No—I have looked at it, yes. I have looked at it, thank you.

CHAIR: Any ideas from that that might be helpful in New South Wales?

Mr IPP: None that I would wish to adopt.

CHAIR: And the new South Australian legislation?

Mr IPP: If there was less than none, I would say that.

CHAIR: Any other areas for reform of the Independent Commission Against Corruption Act at the moment?

Mr IPP: Not at the moment, thank you. You are looking at a person perfectly content.

CHAIR: Commissioner, and other witnesses, what I propose to do is work anti-clockwise and each Committee member will have around seven minutes of questions and answers. When we exhaust that we will do another round.

Reverend the Hon. FRED NILE: Thank you very much, Commissioner and staff, for your attendance. In your report you made reference to the litigation where people have taken matters to court concerning the Commission. What impact is that having on the Commission? It must be affecting your budget as well those unexpected cases.

Mr IPP: It does affect our budget and it affects the degree of serenity that obtains in the Commission, but other than that, that is all.

Reverend the Hon. FRED NILE: One of the witnesses you had before the Commission threatened to go to the Supreme Court if there were findings of corruption. Do those threats have any impact on you as Commissioner, or your staff?

Mr IPP: No.

Reverend the Hon. FRED NILE: Is there a degree of intimidation with those threats?

Mr IPP: I am not intimidated by that. I do not think anybody else is in the Commission. We do our best. If we are proved to be wrong, we will be told so.

Reverend the Hon. FRED NILE: We met the Inspector earlier. I think he said he has had two meetings with you in the past two months. The memorandum of understanding referred to monthly meetings. I know you have been very busy, and that was one of the reasons he gave. Would you prefer to have more frequent meetings?

Mr IPP: Well, I do not know when we would have had the meetings, Reverend Nile. The Commission has been starting at 10 o'clock, running to 12.30, starting at 1.30, finishing sometimes at 5 o'clock, no tea breaks. The morning is taken up before that with consultation with counsel. After that, there is a review of the day's progress. Most lunchtimes I am working. There has simply not been time. I had to meet Mr Cooper during lunchtime, in any event. It has been very difficult. It is not through a lack of desire to meet, but I do not think that there was anything to discuss, in particular. The matters in which he was interested he has written to us about and we have responded. I do not think that the lack of regular meetings has affected the supervision that he has exercised.

Reverend the Hon. FRED NILE: He did say he has maintained contact through telephone conversations and so on.

Mr IPP: Yes, he has certainly done that. We get frequent letters from him, to which we reply as soon as possible.

Reverend the Hon. FRED NILE: Thank you.

The Hon. NIAL BLAIR: Looking at the prevention strategies, obviously there is an increased workload at the moment. Has that had an impact on the prevention strategies and the team conducting that?

Mr IPP: No, it has not, because Corruption Prevention Division, although involved in the inquiries, is not involved to the same extent as the other sections, and it has been able to maintain its usual workload and do whatever was planned for it.

The Hon. NIALL BLAIR: I note from the annual report that there was a target of two rural and regional outreach visits, which was met. Where were the two that were conducted?

Mr IPP: I will ask Dr Waldersee to deal with that, if I may.

Dr WALDERSEE: One was up in the Tweed area and the other was in the Albury area.

The Hon. NIALL BLAIR: How do you determine where to conduct those? Is that on an as-needs basis or something that is rotated from previous years?

Dr WALDERSEE: It rotates the five broad regions of the State. Sorry, 10 regions with two visits a year means we go around once every five years. We do not go back to exactly the same town but within the same region.

The Hon. NIALL BLAIR: Do you think two per year or to get around to each region every five years has proven to be adequate?

Dr WALDERSEE: I think so, given that we now do far more rural and regional training and we also go out and speak in the regions as well. If it was only those two visits, that is probably not enough, but there is quite a large number of visits to the regions.

The Hon. NIALL BLAIR: There was a target of 40 training sessions in the target for prevention, and the last report states that the Commission conducted 116.

Dr WALDERSEE: Yes.

The Hon. NIALL BLAIR: Do you know how many of those were conducted in those regional areas?

Dr WALDERSEE: It was about 30 per cent. One-third of those was in the regions, which, proportional to the number of public officials, is quite reasonable.

The Hon. NIALL BLAIR: Were they mainly targeted at local government and other agencies?

Dr WALDERSEE: The rural and regional outreach is all government agencies. It will have the regional officers plus the local government. Most of the training tends to be done with groups of councils or single councils, sometimes with State agencies that have a lot of regional offices, so it is a mix, but more often councils. We also do a lot of talks in the Aboriginal land councils as well. We went and talked to more than a third of the land councils in this period.

The Hon. NIALL BLAIR: I guess it is hard to measure the success of those, but is there a review and feedback process on each of those sessions?

Dr WALDERSEE: Every session has an evaluation by the people who have attended. Whether they then take that back and do something, that is always a problem.

The Hon. NIALL BLAIR: We see that on the other side of the stats.

Dr WALDERSEE: Yes. In respect of their ratings of whether it was seen as useful for what they do, they rated all the training quite highly. So, short of following them back into the workplace to see if they do something differently, I am not sure we can go much further.

The Hon. NIALL BLAIR: Obviously a number of regional councils had some issues around procurement and issues in relation to that. Has that been specifically addressed in some of those training sessions?

Dr WALDERSEE: To start with the question on notice, which was the effect of removing fees on the volume of training we did, our answer pointed out that at the same time that we removed fees we introduced procurement training, so it was hard to work out which effect was which, but procurement training is now 60 per cent of what we deliver. It has gone from being a new program a couple of years ago to being the predominant training we provide. The procurement issues are dealt with regionally as well as in the metropolitan areas.

The Hon. NIALL BLAIR: Do we know if there are any particular councils—again, I am focusing on the regional areas—that have not sent someone along to the training areas, or is it something that is hard to measure?

Dr WALDERSEE: That is something we have not worked out. It would be very hard.

Ms TANIA MIHAILUK: I have more a comment rather than a question, but similar to what Reverend the Hon. Fred Nile said, you, the Commissioner, and your team, through the media reports and some of the transcripts, have been subjected to threatening remarks. I was pleased to hear you say earlier that, despite this, there is high morale in your team. I commend you for that.

Mr IPP: Threatening remarks do not detract from morale, that I can assure.

Mr NATHAN REES: It may in fact improve it.

Mr IPP: That is right. Sounds to me as if we are doing our job then.

Mr NATHAN REES: Can I take the opportunity to personally congratulate you on the thoroughness and professionalism of the last 12 months and the three central investigations. I have been closer to it than I might want to be, but I have been impressed by the professionalism of your investigators and everyone I have dealt with.

Mr IPP: Thank you, Mr Rees. I really do appreciate that coming from you.

Mr NATHAN REES: That is kind of you. I make particular mention of whoever it is that organises putting your transcripts on the website so rapidly and whoever designed your website. I compare it with other websites that Government agencies and associated entities have put together—National Broadband Network springs to mind. The ease of navigation and the simplicity of it is to be commended.

Mr IPP: Thank you. I should mention that the person concerned is Nicole Thomas, who I think is here.

Mr NATHAN REES: Is that you?

Ms THOMAS: Yes.

Mr NATHAN REES: Well done. What do you see as reputational risks for the Independent Commission Against Corruption?

Mr IPP: If we make a mistake that is serious, that is the biggest risk, and the mistakes can take many forms. I have to say that I am acutely conscious of it and sometimes the decisions are very difficult. That is, the kind of decision that is particularly difficult is to decide whether or not to have a public inquiry. We have been criticised in the past for some decisions we have taken involving members of Parliament. I think that is inevitable. I can understand that there are legitimate views for and against, but a judgement call has to be made. Making the wrong judgement call is, of course, the biggest risk there.

Another risk is the way we treat the people who come to give evidence. We have very extensive powers, and abuse of powers would be a very serious thing for us and would really affect our reputation. So we are very concerned about that, because those powers are very important to us. I know that if we abuse them they might be taken away or limited in some way, so these are matters that we really do think about before we proceed. There is always the possibility that we make the wrong decision.

Mr NATHAN REES: Unrelated to that, there have been very clear differences in culture under different Commissioners. Before you mentioned the report you did into non-governmental organisations, which

I have read—it was a good report. It strikes me that that would equally be a job for an Auditor-General. How do you make a decision as an organisation around what you decide to get involved in where it is not clear cut corruption but might be training or guidance or related matters?

Mr IPP: Frankly, we try to do as much as we can, depending on our resources. We do have meetings and, particularly, we go away for a couple of days to plan the year, and one of the topics in the session is what is the Corruption Prevention Division going to do, what investigations it is going to make. Ideas are then canvassed and time periods have to be allotted to that and decisions have to be made. Clearly in areas where something could be done by another agency, and we have got plenty to do, we will not do it. In the case where it is something that could be done by us or by another agency and the other agency has not done it, generally if we think it is important enough we will do it.

Mr NATHAN REES: This question is motivated by public interest rather than a desire to help out the Government. In previous years when governments have had to manage decisions that have grey areas around probity, process and so on, there has been a number of occasions when Government Ministers have sought the advice of the Independent Commission Against Corruption in advance of or in tandem with a particular process around procurement, land release or whatever. On occasions the answer that has come back from the Independent Commission Against Corruption was that that was not your gig and that whoever requested the advice should go away and sort it out for themselves. Given that we train in procurement and, through you, offer other advisory services, what scope do you think exists for a more structured approach to that particular issue when governments and Ministers of the day seek advice from you simply because they do not know where else to go to satisfy themselves and the public as to the probity of a particular process that is envisaged? Does that make sense?

Mr IPP: Yes, it makes sense but it is very difficult. It has only happened to me once and it eventually led to me getting into trouble. It led directly to the application to disqualify me. Those circumstances were probably unique. I want to emphasise that this was not the case then, but I think there is a problem with that. That is, it could be a means of passing the buck. I think it is worth exploring. I certainly see the logic in it. If you go around telling people how they should behave when they come and ask you how they should behave you should not tell them to go away. It is a new idea and it should be explored.

Mr RICHARD AMERY: I compliment you on the significance of the current investigations that are coming to an end and awaiting a report. Listening to the public, particularly in my electorate, they have found it far more than amusing, but a significant amount of evidence has been published. I think the Independent Commission Against Corruption's reputation has only been enhanced by that investigation. I would like to raise a couple of points from the report. They relate to page 19, section 11, Referrals. I wish to ask a question about outcomes. The issue I raised last time referred to travel and page 141. I now refer to page 19 and section 11 referrals. Your report states that the majority of the 2,900 matters came from three sources and there are three dot points. The second refers to principals and officers of New South Wales public sector agencies—and I emphasise—Ministers who have a duty to report suspected corrupt conduct under section 11 and so on. I note some references in the report to training in the Parliament, procedures, what to look for and obligations. I also note that if a Minister were to be provided with evidence or if allegations were made in the media that relate to his operations he has an obligation to report that, even if it involves a parliamentary colleague, to you as the Commissioner or the Commission. Is that a correct interpretation?

Mr IPP: That is substantially correct.

Mr RICHARD AMERY: I am an Opposition whip and many members come to me with issues and asking how they fill in this or that form, and I try to guide them as much as I can. I must admit that no examples come to mind now. However, if there were something in the press or something were brought to me in confidence by someone—even involving one of my parliamentary colleagues—under section 11, I as a party leader or a Minister would be required to advise the Independent Commission Against Corruption, even if it ended a career, of the allegations without even having substantial evidence. Is that a correct interpretation?

Mr IPP: I must confess that it is not something I have examined carefully because it is not something that it has ever been necessary for me to examine.

Mr RICHARD AMERY: You can take the question on notice.

Mr IPP: I note that subsection 3A of section 11 states that "the Minister, who is under a duty under this section to report a matter, may report the matter either to the Commission or to the head of any agency responsible to the Minister". So there is an alternative.

Mr RICHARD AMERY: I wanted to clarify that because it is an obligation that is not fully understood.

Mr IPP: I draw your attention to section 11(2), which provides that a person to whom this section applies—and it would be the kind of person to whom you are referring; that is, a Minister or a person in your position—is under a duty to report to the Commission any matter that the person suspects on "reasonable grounds" to be true. That judgement is made by the person concerned.

Mr RICHARD AMERY: It is a judgement call.

Mr IPP: Yes. You may decide that there are no reasonable grounds to suspect this and you would be perfectly justified in not reporting it.

Mr RICHARD AMERY: I do not believe that that issue has been fully appreciated by people in leadership positions.

Mr IPP: It is a curious thing, but I note that before elections the number of reports increases exponentially.

Mr RICHARD AMERY: Surely that is coincidental. Page 37 includes a reference to investigation outcomes and so on. I think you referred in your opening comments to findings against 55 people concerning corruption. Is there a pie-chart indicating how many of those 55 ended up being convicted by a court? I will expand on that. The Inspector explained earlier that it is not the role of the Independent Commission Against Corruption to get a conviction or to put someone in jail but to investigate and make a finding. In your opening comments you used the term "mining tenement inquiries". I think there is a public expectation that something may happen down the track. The allegation made by senior counsel assisting the Independent Commission Against Corruption in those cases was of a criminal conspiracy. Again, it comes down to how the evidence is obtained. I know that sometimes the Office of the Director of Public Prosecutions says that it has no evidence because while it has been made public the evidence is not admissible in a criminal court and so on. When you have an allegation of a criminal nature, should the gathering of evidence be along the lines of a fraud squad investigation designed to get a conviction? Should that be an Independent Commission Against Corruption focus when the allegation is of a criminal nature? As far as your reputation is concerned, how many of these corruption findings actually result in someone being convicted in a court?

Mr WALDON: There is no pie chart that would indicate that. As you are aware, each of our reports contains findings of corrupt conduct. In those reports we are also required to make a statement under section 74A(2) of the Act whether we are of the opinion that the matter should be referred to the Director of Public Prosecutions for consideration of prosecution. Not everyone against whom a corrupt conduct finding is made will be referred to the Director of Public Prosecutions. We may make a determination that there is not sufficient admissible evidence and it is a waste of our time and a waste of the Director of Public Prosecutions' time to forward a matter to it. You will see in each of our annual reports an appendix that sets out the prosecution matters for all outstanding matters. We also publish that information on our website. That is information that is published in relation to each report where there has been a recommendation for prosecution.

Mr IPP: In the schedule to the report you will find a statement dealing with what has happened to particular persons who have been referred to the Director of Public Prosecutions and whether there has been a conviction. Page 122 of the present report contains a reference to "status". For the middle individual under "status" you will see that he was sentenced to four months imprisonment on 7 February. That information is available in each of the reports. The point you raised lies very close to my heart. I think it is quite unfair to blame the Commission for failure to get convictions.

I hesitate to give particular examples, but if you get inquiries like the one we have just been doing, which has caused a great deal of publicity and so on, assume hypothetically that the information we obtained which led us to hold a public inquiry was such as to lead us to the view that we had no hope of getting a criminal conviction but that the corruption which we could prove on the evidence available to us was such that it was in the public interest to have an inquiry. We would have the inquiry even though we knew that we would not get a

criminal conviction before we even started if we were of the view that on the evidence available to us the potential corruption was so important that it justified exposing it. That is one of the factors that we always take into account. As far as I am concerned, it is not an important factor.

Where we do think that there is a reasonable prospect of finding evidence of a criminal offence, at the same time we investigate for our purposes of a public inquiry we attempt to take statements to send to the Director of Public Prosecutions. Our theory in practice—it is not always followed—is to attempt to conduct a bilateral investigation. One is for our purposes and the other is for the court. The reason that is not followed always is that sometimes obtaining the evidence we need is all-consuming and we do not have the time to get the evidence for the courts. Once we finish our inquiry, the investigators or an investigator who was involved in the inquiry is deputised to get the evidence and is not required to investigate anything else until that work has been done and the material that we think could ground a criminal conviction is sent to the Director of Public Prosecutions. While I do not regard it as fundamentally important to the decision as to whether to have an inquiry, once we do have an inquiry we are looking at that all the time. Mr Amery, please forgive me if I say this, this is a serendipitous moment for me. The appeal of Ms D'Amore has been dismissed with costs.

CHAIR: Do you have a follow-up question? If you want to ask a supplementary on that topic you may ask it.

Mr RICHARD AMERY: My issue with the case of the former member for Drummoyne was—I am not a lawyer so I do not understand the legal terms—that a matter would proceed to a public hearing on a matter which—

Mr IPP: Yes, I understand—

Mr RICHARD AMERY: —and we have corresponded on this, and spoken about this in the media, and that was the issue that I was always concerned about; that we could find a lot of issues where paper clips and pens have gone astray but they are not public hearing matters but they still may be offences under some Act.

Mr IPP: I do understand that, and thank you for that. When I said that views can differ I had you particularly in mind. I certainly respect those views. I would like to say something about that, if I may. Is there time?

CHAIR: Yes.

Mr IPP: I would like to explain the decision that I made in that and similar cases. It is often very difficult to decide whether to have a public inquiry in those cases. But I always remember the judge who ended up going to jail for lying about whether he was going at 75 miles an hour or 60 miles an hour—

Mr RICHARD AMERY: Yes, Einfeld.

Mr IPP: Yes. It has occurred to me and I have always felt that it was quite appropriate for that to occur. But the same standards that apply to those who apply the law should be applied to those persons who make the law and it is parliamentarians who make the law. It is then very difficult to say that we think that a person has lied to Parliament to get money and that we can say "Forget about it", even though it is only \$10. I understand very well that there are views to the contrary, and I respect that, and I do not say that this was an easy decision. I have welcomed this opportunity to explain publicly my approach generally to matters of this kind.

Mr RICHARD AMERY: I do not want to get involved in a debate over the issue of an entitlement that is now out of date. It is an issue for another time.

Mr IPP: This is not intended in any way as a criticism of anybody's view. I just think that it is important that it is made publicly known what is the Commission's attitude—certainly while I am Commissioner—on issues of this kind, understanding that there is a contrary view.

Mr RICHARD AMERY: We agree to disagree.

The Hon. LYNDIA VOLTZ: My question is to the financial officer. In regard to the financial statement on page 14 of the report, in the 2010-11 financial overview revenue was included as a separate item to government contributions. In this year's report they appear to have been amalgamated.

Mr KOUREAS: The New South Wales Treasurer has changed the format of the financial statements to include the revenue. It is an accounting policy change.

The Hon. LYNDIA VOLTZ: They have required that in relation to any revenue you obtain, and government contributions are now shown as a single item rather than showing the contribution separate from revenue you receive?

Mr KOUREAS: I am sorry; I do not follow your question.

The Hon. LYNDIA VOLTZ: Two separate items have now been combined. Is that right? The 2010-11 report has revenue \$526,000, government contributions \$20 million. This year all that is shown are expenses at \$23,817,000 and revenue at \$23,187,000.

CHAIR: Mr Koureas, do you have a copy of the 2010-11 report?

Mr KOUREAS: No, I have the 2011-12 report.

The Hon. LYNDIA VOLTZ: I will provide my copy to Mr Koureas. The 2010-11 report on page 13 had headings of expenses, revenue which was \$526,000.

Mr KOUREAS: That provides a general overview, a highly summarised version of the accounts.

The Hon. LYNDIA VOLTZ: Are you referring to 2010-11 or the 2011-12?

Mr KOUREAS: The 2010-11 just broke up the Treasurer's Advance of \$1.2 million. Basically the Government contributions are \$20 million compared to the previous year of \$18 million. It is the same format for 2011-12.

The Hon. LYNDIA VOLTZ: Table 4 in 2010-11, operating result, is not the same format.

Mr KOUREAS: Yes, that is what I meant before when I referred to the changing accounting policy. The reporting format changed in 2011-12.

The Hon. LYNDIA VOLTZ: Treasury has required you to do it in that format and not break it down?

Mr KOUREAS: Yes, it is across all agencies.

The Hon. LYNDIA VOLTZ: This year's annual report on page 14 contains an actuarial review of long service leave and your liabilities have increased by \$1 million. Does that \$1 million relate to that actuarial review of the long service liabilities?

Mr KOUREAS: The actuarial liability from recreation is about \$540,000. That is conducted by NSW Treasury in early July every year and has to be incorporated into the accounts.

The Hon. LYNDIA VOLTZ: Is that long service leave?

Mr KOUREAS: Yes.

The Hon. LYNDIA VOLTZ: Is it about half a million dollars?

Mr KOUREAS: Yes, it was at that time during 2011-12.

The Hon. LYNDIA VOLTZ: That was included because it had not previously been included?

Mr KOUREAS: No, NSW Treasury conducts an evaluation of the liability of the Commission, based on known staffing resources. In its actuarial estimates the liability of the Commission was understated so it has increased it by \$540,000. We have to incorporate that in the annual accounts.

The Hon. LYNDIA VOLTZ: Does the \$1 million include the \$500,000, the \$0.385 million—

Mr KOUREAS: That would include that, yes.

The Hon. LYNDIA VOLTZ: In relation to workers compensation claims shown on page 138 of the report there have been three provisional liabilities all of which related to journeys to and from work. Is that correct? The number of workers compensation claims for provisional liability is three, all of which relate to journeys to and from work.

Mr KOUREAS: If that is in the annual report, but I am not familiar with that.

The Hon. LYNDIA VOLTZ: Would those kinds of claim be excluded under the current legislation that has changed in relation to occupational health and safety?

Mr KOUREAS: Yes.

The Hon. LYNDIA VOLTZ: Commissioner, I am pleased that the Commission's equity for women has increased from one in the executive level to two. The Commission now has two out of six, which is good.

Mr IPP: Is it two out of six?

The Hon. LYNDIA VOLTZ: I hope it is, that is what the figures show. It is now 33 per cent.

Mr IPP: The chief of our assessment section is a woman. She has moved away to a job with a much higher salary. She was poached from us so I could tell you that if we had had this hearing last month it would be three out of seven. I would say that if you take the average of seniority it is high—the Deputy Commissioner and the chief of our investigations division—and I think we are doing very well in that.

The Hon. LYNDIA VOLTZ: I think you are doing well. There is still a high proportion of women banded at the lower levels, but I assume that in some part relates to the permanent part-time nature of some of the women working in your office. For example, in the 50 to 75 range there are about 13 women and three men. I assume part of that is because women work permanent part-time in your organisation to accommodate them.

Mr IPP: I think that is right.

Ms HAMILTON: Yes, quite a few are working permanent part-time.

The Hon. LYNDIA VOLTZ: Trainees are listed, but you have no training positions. Do you ever have training positions, or is that just a requirement that it be listed? I note that there is still only one Aboriginal and Torres Strait Islander working in the organisation. It would occur to me that a training position may be a way to increase that to meet your targets.

Mr IPP: I do not know the answer to that question.

The Hon. LYNDIA VOLTZ: Theresa was nodding, so I assume so.

Ms HAMILTON: I was nodding saying, "I do not know the answer to that question".

Mr IPP: But it seems like a good idea and that will also be investigated.

Mr THOMAS GEORGE : I note that consultancy fees, advertising and publicity have increased from 2011 to 2012. Are you required to do more advertising because of the extra working you have been doing? What about the consultancy fees?

Mr KOUREAS: I think the consultancy fees relate to the preparation of a business case for information and communication technology. We had to develop technical specifications and strategy to

implement it and that entailed a whole review of the Commission's existing computer systems, information systems et cetera. That is what the main expenditure related to.

Mr THOMAS GEORGE: What about advertising and publicity?

Mr KOUREAS: I am not familiar with advertising.

Mr IPP: We do not do much advertising. That must be the notices of inquiries and so on.

Mr ANDREW GEE: There is quite a comprehensive regime of statutory investigative powers available to the Commission. Are you satisfied with the way in which that regime currently operates, especially in light of your recent work?

Mr IPP: I cannot think of anything that we would want, not that I have applied my mind to it. But what we have is pretty useful. I do not know if any of my colleagues here have anything in mind, but I cannot tell you of any change that I would seek.

Mr ANDREW GEE: What is the state of the working relationship between the Commission and the Office of the Director of Public Prosecutions? Is it a good relationship? Is there room for improvement? Are you satisfied with the way those two offices work together?

Mr IPP: I think it is probably the best that it has ever been. That does not mean to say that I do not get furious sometimes when they refuse to prosecute.

Mr NATHAN REES: When were those occasions?

Mr IPP: The big improvement has been in the reduction of waiting time on the part of the Director of Public Prosecutions. We do not have to wait so long for the Director of Public Prosecutions to tell us what he is going to do and there has been a big improvement in that. That helps.

Reverend the Hon. FRED NILE: Following up on your remark about the Office of the Director of Public Prosecutions refusing to prosecute, is there a mechanism whereby you can go back to them?

Mr IPP: There is.

Reverend the Hon. FRED NILE: So you can say that you want to insist that there should be a prosecution as a result of all the work you have done?

Mr IPP: We cannot insist. The DPP is entirely independent but if they come back with a decision that we do not like we write and ask them to review it. Sometimes they do, I think. I cannot remember any instance when they came to a different view. Has there been one? No, we try but we do not succeed.

Reverend the Hon. FRED NILE: I know often they will not give reasons. Do they give you reasons?

Mr IPP: We ask for reasons. They give reasons often; we do not always agree with their reasons. It is an uneasy relationship but it is better than it has ever been.

Reverend the Hon. FRED NILE: Should there be some protocol worked out?

Mr IPP: There is.

Reverend the Hon. FRED NILE: A protocol where you go to the Attorney General or something.

Mr IPP: No. We work with each other. Mr Temby was acting head of the Director of Public Prosecutions for a few months. He and I met and worked out a new memorandum of understanding. The new Director of Public Prosecutions has abided by that to the letter so I have no complaints. I mean the complaints are only that I think in some cases they should prosecute, they think they should not, and they win.

Reverend the Hon. FRED NILE: The public perception is that you have done all the work and there is no result. That seems to reflect back on you rather than on the Director of Public Prosecutions.

Mr IPP: That is something we have to wear. It is really a false understanding of what our job really is. I do not blame the Director of Public Prosecutions for that.

Reverend the Hon. FRED NILE: It raises a question—I think we have discussed before—of should there be a prosecution development within the Independent Commission Against Corruption?

Mr IPP: I have thought about that very carefully. As imperfect as our relationship is, and as imperfect as the results are, I think it would be worse if we did it ourselves. I think that it is inimical to justice to have the investigator prosecute.

Reverend the Hon. FRED NILE: There was a reference in an earlier question about other bodies being developed in the various States dealing with corruption. Do you maintain some relationship with similar groups?

Mr IPP: We write to each other. We have a conference in November every couple of years at which we all get together. They are very good conferences. The Deputy Commissioner is in charge of them, she will tell you how good they are.

Reverend the Hon. FRED NILE: Is that the social side of the Independent Commission Against Corruption?

Mr IPP: No, they are very good conferences.

Ms HAMILTON: It is a very well respected anti-corruption conference. IBAC and the other State bodies do contribute—they're partner agencies. They come and give presentations on what they have been doing and we give presentations. Over 500 people normally attend. It is a very good way to keep up with what those other agencies are doing.

Mr THOMAS GEORGE: That is the APSAC conference?

Ms HAMILTON: Yes.

Reverend the Hon. FRED NILE: This committee has been very effective in getting amendments through the Parliament to assist you in your operations. Are there any other areas that are still troubling you?

Mr IPP: I am afraid not. No, I am perfectly satisfied. I cannot think of anything that we want.

CHAIR: I take this opportunity to welcome, to what I will call the public gallery behind the Commissioner, members of the Independent Broad-based Anti-corruption Commission Committee of the Parliament of Victoria.

The Hon. NIAL BLAIR: Commissioner, you mentioned earlier that complaints or referrals quite often peak or increase before elections. How do we deal with people who may use the Commission's name in vain—for example, people coming out in the local media saying that they have reported someone to the Commission when that may or may not have happened? The Commission is not in a place to confirm or deny whether someone has been reported. How is that dealt with? Is it dealt with by the Commission?

Mr IPP: No, it is not. We prefer to make no comment at all on these matters. I do not think that it is appropriate for us to do so. It might be quite unfair on the individual who is being complained about. There are a lot of false statements made about that, but in time they disappear into the wind and I think the system just sorts itself out.

The Hon. NIAL BLAIR: A recent media report showed a photo of officers executing a search warrant wearing ICAC vests. Is that a new initiative to identify the officers in that sense?

Mr IPP: If it was a surprise to you, I can only tell you it was a surprise to me. I do not know. I think for their security it is a good idea. It does not happen very often. It is the first time I have ever seen it. Most searches are conducted without the media being there. The Independent Commission Against Corruption had done nothing to have the media there.

Mr NATHAN REES: I have two things to ask about. The first is an observation following on from the comments of the Hon. Lynda Voltz. The Treasury guidelines around how you itemise revenue are a guide to an organisation such as yours which investigates transparency and probity. My suggestion, for what it is worth, is that you disaggregate those revenue sources. If Treasury has a problem with that then frankly it is too bad. Secondly, if the Independent Commission Against Corruption policy is that there is no media comment on what may or may not be being investigated, what do your media people do?

Mr IPP: They report that the Independent Commission Against Corruption will not admit or deny.

Mr NATHAN REES: How good is that? I am serious. What do they do if there is no comment policy?

Mr IPP: They do not anything; they know. We really try and help the media. We try and work with the media.

Mr NATHAN REES: That is what I am getting at.

Mr IPP: We give them very good facilities. We give them a special room. We give them immediate communication to their base. We try and keep them informed about everything that is going on but we will not comment on investigations.

Ms HAMILTON: Could I just say in fairness to the media manager, the main work that they do occurs during public inquiries. The media manager attends every day of a public inquiry. There are requests for access to exhibits, transcripts and other information by the media. The media manager has to manage all of that. It is true when a matter is still confidential there is little that the media manager can do except to say that we will not comment. But there are often other issues where it is appropriate to comment and the media manager has to prepare a draft response or a media release. So the media manager is kept very busy, particularly when public inquiries are going on.

Mr NATHAN REES: Let me be more specific in my question. I do not expect you to comment on specifics but is the media used to facilitate investigations? I will go to my point directly. The assertion that gets swirled around the city is that the Independent Commission Against Corruption will deliberately release parts of an investigation to a journalist and that precipitates a range of phone calls that are being intercepted. That is the rumour. I am not commenting on the credibility of that rumour.

Mr IPP: Can I answer that?

Mr NATHAN REES: Yes.

Mr IPP: Absolute rubbish. That has never happened while I have been there, and it will never happen.

Mr NATHAN REES: It may well be a useful device, I do not know. I am just trying to clarify it.

Mr IPP: We are meticulous in treating the media in exactly the same way so that every newspaper, journal and television channel is given exactly the same information.

Mr NATHAN REES: I was simply seeking to clarify whether the media role is a product of part of an investigation

Mr IPP: I understand. We do not use the media. The media is not an investigatory arm of the Commission.

Mr RICHARD AMERY: Last time we spoke I ran out of time on a couple of other matters. Last year I raised the issue about overseas travel and I understand that you may have changed the practice for the next annual report—the one that ends this year. If I was a member of the public who put down my bestselling novel to pick up this book to read on the way to work I would see at page 114 that Deputy Commissioner Theresa Hamilton spent six days inclusive in Hong Kong for a grand total of \$894.18—and we know that is not the case—and Bronwyn Baker spent five days inclusive in the United States for less than \$3,000. I have raised this in subsequent deliberative meetings of this Committee—I may have even mentioned it in the House but I cannot recall—if there are other contributors to the travel should they not also be included in the annual report and if a

person paid for his or her expenses should that not also mentioned? This is a public document. I think the way those figures are provided is insufficient to explain five and six days inclusive spent overseas. We have had this discussion at the Committee level but I am not aware if the format is going to change for the next annual report.

Ms HAMILTON: We do report to the Premier's department. For example, in the case of Hong Kong conference obviously they paid for my travel and expenses. There were just some incidental expenses for an additional day. That is reported to the Premier. I personally would have no problem at all with that being reported in the annual report. I am sure we will take that under consideration.

Mr IPP: There is very little overseas travel. I am against it.

Mr RICHARD AMERY: Looking at the annual report as a member of the public perhaps if there was an asterisk with a notation "total cost provided for by the Premier's department travel" or something like that—

Ms HAMILTON: Not by the Premier's department; by the Hong Kong ICAC. But we do report it to the Premier's department and get permission to travel on the basis that it is mainly being funded by that organisation. There would be no problem at all with putting in this report that that organisation paid X for the conference.

Mr RICHARD AMERY: I turn now to a couple of matters that have been raised since then. I detect a little undercurrent as to some disquiet with some processes with the Office of the Director of Public Prosecutions.

Mr IPP: There is no disquiet. It is just that if you get two lawyers you get three opinions. There is disagreement on some issues.

Mr RICHARD AMERY: Reverend the Hon. Fred Nile raised the issue—and there is probably frustration from your point of view—of the independence of the Office of the Director of Public Prosecutions. But in reading this report, and looking at not only the members of Parliament who have been adversely named but also a lot of other people, you have suggested that there were certain breaches under certain Acts—not only the Independent Commission Against Corruption Act but also other criminal Acts. It goes to the Office of the Director of Public Prosecutions and it can be years before they come back and say they will prosecute or they will not prosecute. I know there is some old saying about justice delayed or something but that does appear to be an unacceptable situation. If the Independent Commission Against Corruption in 2009 or 2010 has made a recommendation and it goes the Office of the Director of Public Prosecutions, surely there must be some process to say, "We do not see we have enough evidence here to prosecute somebody" and then make some statement. I do not think this waiting years for something which has left the public memory for a start is fair to the person who has probably been adversely named for a decision one way or the other.

Mr IPP: I agree with you entirely but, as I said, that used to be the case. There has been a great improvement.

Mr RICHARD AMERY: I saw something about that.

Ms HAMILTON: There are currently only three matters with the Director of Public Prosecutions and they all went over last year. So it is still not the speed of light but it is certainly not the case anymore that matters are sitting there for years. All of the old matters have been finalised, and there are only three relatively new matters now with the DPP. So the system of working through and revising the MOU seems to have had an effect and we will keep that going.

The Hon. LYNDIA VOLTZ: I do not know if this is an appropriate question but when you refer matters to the DPP you obviously provide a brief on the findings of the Commission. Do you include all the information that has been released in the public domain, although sometimes you take statements that are not released to the public and are held in camera or in private? Is that also released to the Director of Public Prosecutions?

Mr IPP: All the evidence that is admissible in the criminal court that is relevant is sent to the Director of Public Prosecutions. We do not send the Director of Public Prosecutions material that he cannot use.

The Hon. LYNDIA VOLTZ: So hearsay would be out.

Mr IPP: Yes. And that is part of the memorandum of understanding. That was always their excuse or valid reason. I actually sympathise with them. I think they were right when they said they would get all this paper from us and they would have to search through it to see what is admissible or not. We have stopped that and we only send to the Director of Public Prosecutions what we think is admissible in a criminal court. We undertake the culling ourselves now.

The Hon. LYNDIA VOLTZ: So what the public has heard in the public arena is not necessarily what the DPP is receiving because some of the information that is released into the public arena is inadmissible in court because of the nature of hearsay evidence.

Mr IPP: Not only hearsay but—

The Hon. LYNDIA VOLTZ: Well, the evidentiary nature of proof as well.

Mr IPP: Yes. Nearly every witness who gives evidence in a hearing takes advantage of section 38 of the Independent Commission Against Corruption Act, which is to the effect that nothing that the witness says can be used against him or her. So while we can use it, and it is very good evidence, the DPP cannot use it. I think that is a point I would like to make. The fact that we make findings on evidence that is not admissible in a criminal court does not mean that it is not good evidence. It is probably the best evidence you can get; it is people incriminating themselves out of their own mouths. You cannot get better than that but you cannot use that against them.

Mr RICHARD AMERY: As a former policeman I think that is quite reasonable.

The Hon. LYNDIA VOLTZ: I must have misunderstood section 38 because I thought people use that because they were worried about a propensity for the person they are making the allegation against to sue and it protected them from that kind of liability.

Mr IPP: No, it has nothing to do with that. It has to do with using the evidence they give against them personally in another court. It cannot be done. While it is good evidence on which you can make findings, soundly based, it is not evidence which the Director of Public Prosecutions can use.

The Hon. LYNDIA VOLTZ: We used to get this in military police a lot, and I am sure Mr Amery had the same in police. Often when we had done the investigation we had done it a certain way but when the commanding officers of units had done it in their own way, the prosecutor used to often wonder at the nature of the way they had taken evidence as opposed to a police organisation. I guess people who have been trained in the police method—

Mr IPP: It is very similar to that.

The Hon. LYNDIA VOLTZ: —of taking evidence have a certain view. You have two people who have been approved for the interpreting allowance in Cantonese and in Polish. You do have a high number of other languages, but are those people in particular used for interpreting? Are people referred to those people with special language skills when they ring up to make complaints or take evidence? I am interested that you have some languages but there appear to be about three or four that are identified in a report.

Mr IPP: I think those are for giving evidence in the hearing room. When we are taking evidence and the person cannot speak English we will get an interpreter, whatever the language is.

The Hon. LYNDIA VOLTZ: So it is always when you are investigating you use outside interpreters?

Mr IPP: Where necessary, yes.

Mr ANDREW GEE: I have a follow-up question to those of Mr Blair. I took it from your answers to him that there is no formal mechanism in the Commission to deal with frivolous or vexatious complaints?

Mr IPP: Except throw them in the waste paper basket.

Mr ANDREW GEE: In your view is that the only mechanism that is warranted?

Mr IPP: Yes. I think there are some other agencies which penalise people who make false complaints. I would not want that. People should feel free to make whatever complaint. We can wear those frivolous complaints.

CHAIR: To follow-up Ms Voltz's questions, does it follow from your evidence that you do not brief the DPP with inadmissible evidence?

Mr IPP: We try not to.

CHAIR: Does that mean that vast slabs of transcript of the public hearings where witnesses have taken advantage of section 38 are not briefed to the Director of Public Prosecutions?

Mr IPP: Yes. We do not send transcripts. The transcripts are publicly available.

CHAIR: Do you have any dealings with Transparency International?

Mr IPP: No.

CHAIR: Would you like to make any general observations about the level of corruption in public office in New South Wales compared with comparable jurisdictions overseas?

Mr IPP: I do not think it is nearly as bad as people think. There are some bad eggs, but generally I think people in public office in New South Wales are dedicated, committed people with integrity. But there are always some who are not but they are in a small minority. That is my opinion.

Reverend the Hon. FRED NILE: Following up on the matters referred to the Director of Public Prosecutions and no action is taken, I note in your report that you give some explanations. I wonder if you could include a summary in your report where you say "We referred 99 cases; the Director of Public Prosecutions only acted on 20 or 30", so it can highlight to us the work you are doing and the lack of success from the Director of Public Prosecutions' end.

Mr IPP: I do not know if that would be advisable because that would involve reporting on expressions of opinion about the credibility of witnesses. Where we have already expressed views in the report, the Director of Public Prosecutions may take a different view. It would reflect on the reputation of those witnesses if we say we thought the witness was good and the Director of Public Prosecutions said he did not think that the witness was honest. That would not be appropriate to mention. But the part of our memorandum of understanding that is important to us is that where the Director of Public Prosecutions refuses to prosecute because the witness is not cooperative, that is something that we ask him to say publicly, and we will say it publicly, because in very many cases the reason for the Director of Public Prosecutions refusing to prosecute is that a witness on whom we have relied and who we have got into the hearing room on a summons and used our powers to get evidence, that witness will refuse to give a statement to the Director of Public Prosecutions and then the Director of Public Prosecutions will not prosecute. That is his policy. I am not saying that that is a good or bad policy. That is his policy. We can do nothing about that.

It is not 100 per cent followed but that is his general policy. Sometimes you get a witness who has a really bad experience in the witness box and then says, "I'm never going into the witness box again"; if that witness's evidence is crucial to the proof of a crime and they will not cooperate with the Director of Public Prosecutions, the Director of Public Prosecutions generally—not always—takes the view that he will not prosecute. But we then say that, but that is the reason we like to put that out into the public; otherwise people do not understand why we can make a finding but the Director of Public Prosecutions refuses to prosecute.

Reverend the Hon. FRED NILE: With the new building for the Independent Commission Against Corruption, is it possible to have private access or private entry for witnesses? We have seen the American style of harassment of witnesses.

Mr IPP: I would really like private access to the Commissioner, but I cannot get it.

Reverend the Hon. FRED NILE: Or both. You can have underground car park access—

Mr IPP: We have underground car park access where we are. That did not prevent the media from descending on Mr Lucky Gattellari on the lowest, fifth, floor in the basement and photographing him. That is something we can do nothing about. The kind of building that we will go into is not custom built. If we had our own custom built building we could, but once you go into leased premises you cannot do it.

The Hon. NIALL BLAIR: I have a question about—I do not know if this is the right word—closure for people who may have been reported or referred, closure in the sense that if someone is reported and the ICAC does an investigation and finds that they do not need to go any further, closure for that person to know that there is no longer an investigation or they can move on.

Mr IPP: That is a completely valid point. We do not have a formal means of doing this and it is often awkward because there are sometimes other agencies investigating and they do not want us to let them know, but generally we do our best to inform that person. I personally do not think it is fair to keep that person in suspense and we do our best to let that person know that whereas we have started investigating or we have done investigations and they know about that, because they have been part of the investigations, we will find some way of letting them know. It might not happen immediately because sometimes we have to wait for other agencies to finish their investigations but there will come a time when we will let them know in some way or another. We do not have a formal procedure for this, as I said, but we do try to let them know.

The Hon. NIALL BLAIR: I understand the complexity of this issue, but relating that back to my earlier question where someone may have claimed that they have reported something that is used, for a better example, there is a claim in the media that they have reported me to the Commission. Is there any possibility that I can get closure to say yes or no, that has occurred or we have looked at it and it is not happening? I know it is a difficult one.

Mr IPP: It does not happen very often that someone says they have reported someone to ICAC when they have not. Again, I think that the person to whom this happens is in a very unfortunate position and I personally will do my best to make sure that that person knows the truth. But we do not have a formal system for doing this. It is difficult because if we do say that and new evidence comes up, then what?

The Hon. NIALL BLAIR: I do not know the answer.

Mr IPP: We play it by ear, I am afraid. That is not very satisfactory, I know, but all I can say is that I am acutely conscious of this and try to ensure that fairness is done where we can do it safely.

Mr RICHARD AMERY: In relation to referrals from Parliament, I understand there was a referral from Parliament—I think it may be the current one that you are just winding up—supported by all sides of Parliament, but when one side of Parliament requests the referral of a member or former member to the Independent Commission Against Corruption, what would be your comment as to whether that should be supported by all? I mean at the end of the day, if a serious allegation was made in the Parliament, what would be your comment as to whether that sort of request could be blocked by the Parliament and, if it were blocked by the Parliament, would that initiate your own powers under section 20 of the Act, I think it is, to initiate an inquiry into the matter that appeared to be getting blocked for political reasons?

Mr IPP: I do not think anybody can block an inquiry. If there is a particular individual in Parliament who wants to refer a matter to the Commission, he or she is open to do it. They can do it; it does not need the Parliament to do it. But if both Houses of Parliament refer someone—

Mr RICHARD AMERY: There must be an investigation.

Mr IPP: There must be an investigation. If an individual refers, it is in our discretion whether to investigate. The real significance of a referral by both Houses of Parliament is that we have no choice; we have to investigate.

Mr RICHARD AMERY: That is the point I was making, that if there was a raging debate about a referral to the Independent Commission Against Corruption, because there is a request that comes with more significance, it comes by resolution of the Parliament, would the Independent Commission Against Corruption be alerted by the fact that somehow, for political reasons, this was being stopped?

Mr IPP: Mr Amery, I just do not see how it could be stopped. I mean if you wanted to have somebody investigated and you put it up in Parliament and you did not get the majority, you would be on the phone immediately to say, "Look, these so and so's have not agreed, but please investigate this", and off we would go.

Mr RICHARD AMERY: But if I did not make the call, you have some powers to initiate an inquiry under the Act.

Mr IPP: We have our own. We have done it. It is something we do do occasionally, especially if we read something in the press that we do not know about.

CHAIR: Before closing the public hearing, as there are no further questions and no questions on notice, Commissioner, on behalf of the Committee I thank you for your attendance today and for giving evidence.

Mr IPP: Thank you.

(The witnesses withdrew)

(The Committee adjourned at 12.33 p.m.)